

October 26, 1999

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VIA US MAIL AND FACSIMILE

David K. Clay, Esq.
Senior Attorney
United States Environmental Protection Agency
Region 4 Atlanta Federal Center
61 Forsyth Street
Atlanta, GA 30303-8960

Re: Collierville Superfund Site; Proposed Tolling Agreement

Dear Mr. Clay:

This letter is further to our telephone conversation earlier this week about EPA's request that Carrier toll the statute of limitations governing EPA's recent claim for oversight costs at the Collierville site. I have received the proposed tolling agreement and have forwarded it to my client for review.

Two steps would assist in that review and resolution of EPA's claim. First, Carrier wants to assure that it correctly understands precisely what costs EPA claims remain unpaid. Second, Carrier needs for EPA to articulate its position about the governing statute of limitations, an issue which the tolling agreement does not appear to address.

It is Carrier's understanding, based on discussions between Carrier and EPA personnel, that EPA's claim for **unpaid** oversight costs is broken down as follows:

\$46,207 – pre-dating the 1989 Administrative Order on Consent (AOC);

\$352,874 – from the period covered by AOC;

\$2,984 – from the period after the Unilateral Administrative Order (UAO) was issued, in other words, after its issuance in February 1993.



David K. Clay, Esq.
October 26, 1999
Page 2

If this recitation of the unpaid costs is incorrect in any way, please let us know what the correct amounts and time periods are.

As we discussed, Carrier paid the oversight cost claim made by EPA in July 1998, so that the additional claim post-dating the UAO is for \$2,984. Carrier is inclined to pay that sum once EPA identifies the precise items in the cost summary to which this sum corresponds. This would avoid the need to provide the underlying documentation.

In our discussion, I understood that EPA viewed the costs for the UAO period to be governed by the six year statute of limitations period for remedial actions contained in section 113 of CERCLA. I also understood that the tolling agreement was intended to address only those costs. If this understanding is correct, the prompt payment of the \$2,984 for that time period should obviate the need for the tolling agreement.

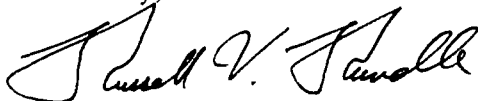
You have indicated that EPA also wants Carrier to sign another administrative order on consent incorporating the unilateral administrative order (UAO). Carrier's consideration of this EPA request would be assisted by a copy of the consent order EPA is proposing.

With respect to the claim for unpaid oversight costs covered by the 1989 AOC, Carrier paid three EPA oversight cost claims, rendered in 1990, 1991, and 1992. The 1989 AOC requires an annual accounting by EPA for its oversight cost claims. If EPA precisely identifies those remaining costs it claims are unpaid, the scope of the documentation to be produced and reviewed can be significantly limited.

With respect to the oversight costs predating the UAO, I understood that EPA took the position that the AOC governed, and that as a matter of contract law, Carrier was bound to pay those costs. If EPA's claim for that time period is in fact governed by contract law, then the six year statute of limitation in 28 U.S.C. § 2415(a) would appear to govern.

It would be helpful to Carrier's consideration of EPA's claim if you could set forth briefly the legal basis for EPA's contention that these AOC costs are not time-barred, as all of them are more than six years old, and most or all of them could have been included in the three bills EPA rendered to Carrier under the AOC in 1990, 1991, and 1992, bills which Carrier paid.

Sincerely,

A handwritten signature in black ink, appearing to read "Russell V. Randle". The signature is fluid and cursive, with the first and last names being more prominent.

Russell V. Randle
Counsel for Carrier Corporation